

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVISIONS TO RULES PROHIBITING UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE [199 IAC 22]	DOCKET NO. RMU-04-9
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ORDER COMMENCING RULE MAKING

(Issued December 1, 2004)

Pursuant to Iowa Code §§ 17A.4, 476.1, 476.2, and 476.103, the Utilities Board (Board) proposes to adopt the rules attached hereto and incorporated herein by reference. Current subrule 199 IAC 22.23(2) prohibits a telecommunications service provider from submitting a preferred carrier change order to another service provider without customer authorization of the change. The purpose of the rule is to prevent "slamming," which is an unauthorized charge in a customer's telecommunications service. The classic example is when a long distance carrier submits an order to a local exchange carrier to change a customer's presubscribed long distance carrier without first obtaining authorization from the customer.

The rule appears to be effective in preventing slamming, but it can cause unnecessary delays of other, legitimate transactions. For example, a provider currently must file a request for a waiver of subrule 22.23(2) in order to acquire part or all of a customer base from another carrier without obtaining individual customer

consent from each and every customer. This happens, for instance, when one carrier is going out of business or is being acquired by another carrier.

In cases where a provider is acquiring all or part of the customer base of another provider by means of a sale or asset transfer, obtaining the authorization of each affected customer can be a burdensome process. The Board has consistently waived the application of subrule 22.23(2) in cases involving the sale or transfer of a customer base. As of September 17, 2004, the Board had issued seven waivers of subrule 22.23(2) in 2004. Given the frequency with which waivers of subrule 22.23(2) are requested and granted, the Board recognizes the need to consider an alternative to the waiver process that will relieve the Board and service providers from the burdens of preparing and responding to requests for waivers without sacrificing consumer protection.

The proposed rules are modeled on the federal rules governing customer authorization in cases of transfer or sale of customers between telecommunications carriers found at 47 CFR § 64.1120(e). The proposed rules create a self-certification procedure to be used by a provider instead of the waiver process to avoid the requirement of obtaining authorization from individual customers in cases where the service provider acquires the customer base of another provider in the course of the sale or transfer of assets.

The proposed rules require advance notice and certification to the Board, advance notice to affected customers, and prescribe the content of such notice. The

acquiring carrier will be required to file a letter with the Board, no later than 30 days prior to the transfer of the customer base to the new service provider, that includes the names of the parties to the transaction, the types of telecommunications services provided to the affected customers, the date of the transfer of these customers to the acquiring carrier, a certification of compliance with the required procedures, and an attached copy of the notice sent to the affected customers.

If there is a material change to the required information after the letter is filed, such as a change in the date of the customer transfer, the acquiring carrier must file written notification of the change(s) with the Board no more than ten days after the transfer date designated in the prior filing. The Board may require the acquiring carrier to send an additional notice to the affected customers regarding such material changes.

The new rules require the acquiring carrier to provide affected customers with written notice of the carrier change no later than 30 days prior to the transfer of the customer base to the acquiring carrier. This advance notice will allow customers to make informed decisions as to whether to accept the acquiring carrier as their preferred carrier. The advance notice to customers must include the date on which the acquiring carrier will become the new provider; the rates, terms, and conditions of the services and the means by which the acquiring carrier will notify the customer of any changes; a statement that the acquiring carrier will be responsible for any carrier change charges; the customer's right to select a different preferred carrier for the

services; whether the acquiring carrier will be responsible for handling any complaints against the selling or transferring carrier; and the toll-free customer service number of the acquiring carrier. The advance notice requirement should not be unduly burdensome on service providers, as they have already been expected to notify affected customers as part of the current waiver process.

The proposed amendments expressly prohibit use of the self-certification procedure to avoid liability for slamming rule violations by transferring customers to another corporation. Carriers are cautioned that the Board will not tolerate attempts to avoid liability for slamming violations by using the new procedures for anything other than a genuine sale or transfer of customers between legitimate carriers.

The proposed amendment modifies the definition of "slamming" in subrule 22.23(1) to explain that slamming does not mean the designation of a new service provider made pursuant to a sale or transfer of another carrier's customer base in accordance with the new procedures.

Finally, the proposed amendment to subparagraphs 22.23(2)"a"(3) – (5) removes the customer's social security number from the list of examples of appropriate verification data. There is a growing concern about the security of personal identification data such as social security numbers, and the Board believes its rules should not encourage use of this information.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-04-9 is commenced for the purpose of receiving comments on the proposed rules in the notice attached hereto and incorporated herein by reference in this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 1st day of December, 2004.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.103, the Utilities Board (Board) gives notice that on December , 2004, the Board issued an order in Docket No. RMU-04-9, In re: Revisions to Rules Prohibiting Unauthorized Changes in Telecommunications Service [199 IAC 22], "Order Commencing Rule Making."

Current subrule 199 IAC 22.23(2) prohibits a telecommunications service provider from submitting a carrier change order to another service provider without customer authorization of the change. The purpose of the rule is to prevent "slamming," which is an unauthorized charge in a customer's telecommunications service. The classic example is when a long distance carrier submits an order to a local exchange carrier to change a customer's presubscribed long distance carrier without first obtaining authorization from the customer.

The rule appears to be effective in preventing slamming, but it can cause unnecessary delays of other, legitimate transactions. For example, a provider currently must file a request for a waiver of subrule 22.23(2) in order to acquire part or all of a customer base from another carrier without obtaining individual customer consent from each and every customer. This happens, for instance, when one carrier is going out of business or is being acquired by another carrier.

In cases where a service provider is acquiring the customer base of another service provider by means of a sale or asset transfer, obtaining the authorization of each affected customer could be a burdensome process. The Board has consistently waived the authorization requirement in these kinds of cases.

The proposed amendments to subrule 22.23(2) address situations involving the carrier-to-carrier sale or transfer of customer bases and create new procedures that will allow the change of telecommunications service providers without customer authorization or waiver. The proposed amendments will require an acquiring carrier to self-certify to the Board, in advance of the transfer, that the carrier will follow the required procedures, which include advance notice to the Board and affected customers. This will protect the interests of the affected customers by giving them sufficient time to select a preferred carrier other than the acquiring carrier, if they want to. The proposed amendments also modify the definition of "slamming" to explain that slamming does not include a change in provider made pursuant to a sale or transfer of assets, and remove the phrase "social security number" from the list of examples of appropriate verification data in subparagraphs 22.23(2)"a"(3) - (5). The order commencing rule making contains a more thorough discussion of the reasons for the proposed rule making. The order is available on the Board's Web site at www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before January 11, 2005, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All

communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.103.

The following amendments are proposed.

Item 1. Amend subrule 22.23(1), definition of slamming as follows:

"Slamming" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, without the verified consent of the customer. "Slamming" does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another carrier's customer base, provided that the designation meets the requirements of 199 IAC 22.23(2)"e."

Item 2. Amend subparagraph 22.23(2)"a"(3) as follows:

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the customer's date of birth ~~or social security number~~). The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate

from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change; or

Item 3. Amend numbered paragraph 22.23(2)"d"(4)"2," second and third bulleted paragraphs as follows:

- The local exchange carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred service provider freeze is to be imposed, to impose a preferred service provider freeze. The electronic authorization shall confirm appropriate verification data (e.g, the customer's date of birth ~~or social security number~~) and the information required in 22.23(2)"d"(4)"3." Service providers electing to confirm preferred service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred service provider freeze request, including automatically recording the originating automatic numbering identification; or
- An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred service provider freeze and confirmed the appropriate verification data (e.g., the customer's date of birth ~~or social security number~~) and the information required in 22.23(2)"d"(4)"3." The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have

any financial incentive to confirm preferred service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred service provider freeze.

Item 4. Amend numbered paragraph 22.23(2)"d"(5)"2" as follows:

2. A local exchange service provider administering a preferred service freeze must accept a customer's oral authorization stating the intention to lift a preferred carrier freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred service provider freeze, the service provider administering the freeze shall confirm appropriate verification data (e.g., the customer's date of birth ~~or social security number~~) and the customer's intent to lift the particular freeze.

Item 5. Amend subrule 22.23(2) by adopting new paragraph "e" as follows:

e. *Procedures in the event of sale or transfer of customer base.* A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's customer base without obtaining each customer's authorization in accordance with 199 IAC 22.23(2)"a", provided that the acquiring carrier complies with the following procedures. A telecommunications carrier may not use these procedures for any fraudulent purpose, including any attempt to avoid liability for violations under 199 IAC 22.23(2)"a".

(1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the board a letter notifying the board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring carrier. In the letter, the acquiring carrier also shall certify compliance with the requirement to provide advance customer notice in accordance with 199 IAC 22.23(2)"e"(3) and with the obligations specified in that notice. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected customers.

(2) If, subsequent to the filing of the letter of notification with the board required by 199 IAC 22.23(2)"e"(1), any material changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the board no more than ten days after the transfer date announced in the prior notification. The board may require the acquiring carrier to send an additional notice to the affected customers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected customer. The acquiring carrier must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

- The date on which the acquiring carrier will become the customer's new provider of telecommunications service.

- The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the customer's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the customer of any change(s) to these rates, terms, and conditions.
- The acquiring carrier will be responsible for any carrier change charges associated with the transfer.
- The customer's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available.
- All customers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze.
- Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and
- The toll-free customer service telephone number of the acquiring carrier.

December 1, 2004

/s/ Diane Munns

Diane Munns
Chairman